

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 19-20098
HON. AVERN COHN

CHARLES LEVERETT,

Defendant.

MEMORANDUM AND ORDER DENYING MOTION TO SUPPRESS (Doc. 19)

I. Introduction

This is a criminal case. Defendant Charles Leverett is charged in a one count indictment with felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1).

Before the Court is defendant's motion to suppress the gun on the grounds that the officer lacked a reasonable suspicion to stop Leverett. The Court held a hearing on the motion at which the officer who stopped Leverett testified. The Court also heard oral argument. After reviewing the record, particularly the videos which captured the encounter, the Court is satisfied that no constitutional violation occurred. Accordingly, the motion is DENIED.

II. Background

On the evening of November 27, 2019, Leverett was inside a Little Caesar's restaurant in Detroit. Other patrons, including a child, were present in the restaurant. Leverett was standing in front of the door to the restaurant. Officer Kijuan Anderson of the Detroit Police Department walked into the Little Caesar's. Leverett turned and

moved of the doorway. Officer Anderson immediately approached Leverett and asked him the following question: "You got a pistol on you bro.?" Leverett responded: "Yeah." At this point, as seen by Exhibit A, there was no physical contact between the officer and Leverett.

Leverett then moved his hands slightly at which point Officer Anderson restrained him by grabbing a hold of his arms and stated "Hang on, hang on, no no no." The restraint is seen in Exhibit B. Officer Anderson then asked if Leverett had a concealed pistol license (CPL). Leverett responded that he did. The officer asked where it was. Leverett said in his wallet. While the officer was attempting to locate Leverett's wallet, he was assisted by his partners who entered the restaurant. During this time, one of his partners retrieved a pistol from Leverett's right hip. Leverett was placed in handcuffs while the officers continued to search his wallet for the CPL. Eventually, Leverett admitted he did not have a CPL. At that point, he was arrested for carrying a concealed weapon, removed from the restaurant and placed into a squad car.

At the hearing, Officer Anderson explained that he was prompted to ask Leverett if he had a gun because he observed a "bulge" near his right hip and when the officer entered the restaurant, Leverett turned his body or "bladed" away from him. Based on his experience, the presence of the bulge and Leverett's movement made him believe that Leverett may be armed.

III. The Law

The law is well settled. The Fourth Amendment protects "the people...against unreasonable searches and seizures." U.S. Const. amend. IV. A search occurs "[w]hen the Government obtains information by physically intruding on persons." Florida v.

Jardines, 569 U.S. 1, 3 (2013) (internal quotation marks omitted) (quoting United States v. Jones, 565 U.S. ___, n.3. “A seizure occurs when ‘under the totality of the circumstances, a reasonable person would have believed that he or she was not free to walk away.’ ” United States v. Alston, 375 F.3d 408, 411 (6th Cir. 2004) (quoting United States v. Saperstein, 723 F.2d 1221, 1225 (6th Cir. 1983))).

Police-citizen encounters come in three variants: “ ‘consensual encounters in which contact is initiated by a police officer without any articulable reason whatsoever and the citizen is briefly asked some questions; a temporary involuntary detention or Terry stop which must be predicated upon reasonable suspicion; and arrests which must be based on probable cause.’ ” United States v. Campbell, 486 F.3d 949, 953-54 (6th Cir. 2007) (quoting United States v. Bueno, 21 F.3d 120, 123 (6th Cir. 1994)). Terry stops must be based on “reasonable, articulable suspicion that criminal activity is afoot.” Illinois v. Wardlow, 528 U.S. 119, 123 (2000) (quoting Terry v. Ohio, 392 U.S. 1, 30 (1968)).

IV. Analysis

Here, despite Leverett’s argument to the contrary, the initial encounter between Officer Anderson and Leverett was consensual. Consensual encounters are “permissible without any particularized suspicion because no seizure has occurred for purposes of the Fourth Amendment.” United States v. Alston, 375 F.3d 408, 411 (6th Cir. 2004). Officer Anderson approached Leverett and asked him if he had a gun. Even Leverett’s counsel conceded, albeit reluctantly, that the officer’s question was not forbidden by the Fourth Amendment. At that time, the officer did not have any physical contact with Leverett. The video confirms this. Therefore, there was no constitutional

violation at the time Officer Anderson asked Leverett if he had a gun.

Once Leverett responded that he did have a gun, the dynamic changed. While Leverett focuses on whether Officer Anderson had reasonable suspicion to stop and question him, this argument misses the point. This was a consensual encounter that became a stop once Officer Anderson knew Leverett was armed. At that point, whether Officer Anderson had reasonable suspicion to stop Leverett is irrelevant because Leverett admitted he was in fact armed. Officer Anderson could then take reasonable steps to investigate whether Leverett was carrying the gun lawfully. This is because in Michigan,

(1) [a]n individual who is licensed to carry a concealed pistol shall have his or her license to carry that pistol and his or her state-issued driver license or personal identification card in his or her possession at all times he or she is carrying a concealed pistol or a portable device that uses electro-muscular disruption technology.

(2) An individual who is licensed to carry a concealed pistol and who is carrying a concealed pistol or a portable device that uses electro-muscular disruption technology shall show both of the following to a peace officer upon request by that peace officer:

(a) His or her license to carry a concealed pistol.

(b) His or her state-issued driver license or personal identification card.

Mich. Comp. Laws § 28.425f(1)and (2). In Michigan, it is illegal to “carry a pistol concealed on or about [one's] person, or, whether concealed or otherwise, in a vehicle operated or occupied by the person...without a license to carry the pistol as provided by law.” Mich. Comp. Laws § 750.227(2). A person in violation of Michigan's concealed carry law is guilty of a felony. Mich. Comp. Laws § 750.227(3). In other words, an individual carrying a concealed weapon is committing a crime unless the individual has a valid CPL.

Here, the officers did not detain Leverett for any longer than necessary to

investigate whether he was carrying a firearm lawfully. “The scope of the investigative stop depends on ‘the circumstances that originally justified the stop,’ United States v. Martin, 289 F.3d 392, 396 (6th Cir. 2002), and it is appropriate to consider whether the law enforcement officers, ‘diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant, [United States v. Foster, 376 F.3d 577, 585 (6th Cir. 2004)].” United States v. Smith, 594 F.3d 530, 537 (6th Cir. 2010). Indeed, after Leverett admitted he had a gun, Officer Anderson then asked him if he had a CPL and began looking for the CPL, not the gun. The officers were also entitled to restrain Leverett while they investigated whether he had a valid CPL. See United States v. Bridges, 2016 WL 3922354 (E.D. Mich. July 21, 2016) (officers were entitled to handcuff defendant, place in him patrol car, and check computer to determine if defendant had a CPL).

SO ORDERED.

S/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: 7/24/2019
Detroit, Michigan

EXHIBIT A

GOVERNMENT
EXHIBIT
F-1
(Enlarged)



EX. F -- EX C (CLIP2) ...



GOVERNMENT
EXHIBIT
F-2
(Enlarged)

EX. F -- EX C (CLIP2) ...